

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF PUERTO RICO

UNITED STATES OF AMERICA

Plaintiff

vs

ROBINSON TEJADA-PARRA

Defendant

CRIMINAL 05-0245CCC

O R D E R

Before the Court are the Objections to Presentence Report filed by defendant Robinson Tejada-Parra on June 8, 2006 (docket entry 82). Defendant's sole objection is to the U.S. Probation Officer's failure to apply the provisions of U.S.S.G. §2S1.3(b)(3) to his offense level computation, which would have required that his offense level be decreased to level 6. Defendant's total offense level, as determined in the Pre-Sentence Report (PSR), is currently 14, with a resulting advisory guideline sentencing range of 15 to 21 months. Defendant posits that his total offense level should be 6 instead, with an advisory guideline sentencing range of 0 to 6 months.

In order for U.S.S.G. §2S1.3(b)(3) to apply, neither of subsections (b)(1) or (b)(2) of said section can be applicable. Defendant, however, did receive an upward two-level adjustment under subsection (b)(1)(B), since the U.S. Probation Officer determined that the offense of conviction involved bulk cash smuggling. Defendant, nonetheless, insists that as "bulk cash smuggling" is defined under Application Note 2 to U.S.S.G. §2S1.3 as "knowingly concealing, with the intent to evade a currency reporting requirement under 31 U.S.C. 5316, more than \$10,000 in currency or other monetary instruments," and he was acquitted of the charge of failing to report currency in excess of \$10,000.00 under 31 U.S.C. §5316, then subsection (b)(1)(B) should not be applied to him, which could in turn trigger the application of subsection (b)(3). Defendant seems to conveniently forget that he was convicted precisely of the offense of bulk cash smuggling codified in 31 U.S.C. §5332 as charged in Count Three

CRIMINAL 05-0245CCC

2

of the Indictment, which justifies the application of the two-level upward adjustment under subsection (b)(1)(B). This, in turn, precludes the applicability of U.S.S.G. §2S1.3(b)(3). Accordingly, defendant's objection to his PSR is OVERRULED.

SO ORDERED.

At San Juan, Puerto Rico, on June 21, 2006.

S/CARMEN CONSUELO CEREZO
United States District Judge